

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

ROBERT L. WILKINS, et al.,)	
)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. CCB-93-468
)	
MARYLAND STATE POLICE, et al.,)	
)	
Defendants.)	
)	

MARYLAND STATE CONFERENCE OF NAACP BRANCHES, et al.,)	
)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. CCB-98-1098
)	
MARYLAND STATE POLICE, et al.,)	
)	
Defendants.)	
)	

CONSENT DECREE

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WHEREAS, the parties to this Consent Decree agree that:

- a. Trust is vital to the success of policing in a democratic society and that community outreach is an essential part of trust-building;
- b. Both incidents and perceptions of racially biased policing lead to mistrust of police;
- c. The police cannot function effectively in communities where an atmosphere of mistrust is prevalent; and
- d. To build trust and reach mutual understanding with regard to the issue of racial profiling, police and community members must be willing to hear each other out.

AND WHEREAS:

- a. The Maryland State Police (MSP) recognizes that community outreach to people of color is an important component of a departmental strategy to prevent biased policing and perceptions of biased policing; and
- b. The plaintiffs, the NAACP, and the ACLU recognize that relationships are “two way streets” and, for police/resident relationships to work, people of color also must engage with the police, doing more than verbalizing concerns and complaints.

AND WHEREAS:

- a. The parties acknowledge the jurisdiction of the Court and its authority to enter this Consent Decree.

THEREFORE, the plaintiffs and defendants MSP and Colonel Edward T. Norris, in his official capacity as Superintendent of the Maryland State Police, enter into the following commitments and consent to their enforcement as expressly provided below in the form of a Consent Decree of the Court:

1 General Provisions

- 1.1 These terms apply state-wide to MSP activities.
- 1.2 Subject to Section 10, below, this Consent Decree constitutes a final and complete resolution of plaintiffs’ demands for declaratory and injunctive relief in Case No. CCB-98-1098 (*NAACP*), as demanded in paragraphs (c), (d), (e), (f), and (g) of the Prayer for Relief in the Second Amended Complaint in this case. This Consent Decree does not resolve plaintiffs’ demands for relief in paragraphs (a), (b), (h), (i), (j), (k), or (l) in the Prayer for Relief in the Second Amended Complaint. Also subject to Section 10, below, this Consent Decree,

furthermore, constitutes a final and complete resolution of Plaintiffs' Motion for Enforcement of Settlement Agreement and for Further Relief, dated November 14, 1996, in Case No. CCB-93-468 (*Wilkins*). Unless otherwise specified herein, the terms of this Consent Decree supersede and replace those of the prior *Wilkins* Settlement Agreement.

- 1.3 While the parties carefully have drafted this Consent Decree, and intend that it fully memorialize the terms of their agreement as drafted, they recognize that events or experience after it takes effect may make it desirable to modify or amend the decree, provided that such a modification or amendment is consistent with its original spirit and purpose. The parties therefore agree that they retain the authority to request amendment or modification to the decree and that the Court shall retain authority to order such changes, provided that they are: (a) reasonably necessary fully to implement the original intent of the parties and (b) do not materially alter the obligations imposed and benefits conferred herein. Any such amendments or modifications sought pursuant to this Section shall be governed by the following procedures: The party seeking amendment or modification shall notify the other party in writing, explaining in reasonable detail the change that is sought and the reasons for it. The parties then will have 30 days to confer and discuss the requested change. After the 30 day period, if the parties agree on the request for change, they may present it to the Court by joint or consent motion. If the parties do not agree, the party seeking the change may request it to the Court by motion.

2 General Policy Prohibiting Racial Profiling

- 2.1 MSP reaffirms its policy, as stated in General Order 01-9503 (1/1/95) and reaffirmed in Special Order 01-9716 (6/30/97), that troopers may not rely on an individual's race or ethnicity as a factor in determining whether to stop, question, search or arrest an individual, unless race or ethnicity is part of an identifying description of a specific suspect or suspects for a specific crime or crimes.
- 2.2 MSP recognizes that the obligations set out herein are not in lieu of its obligations under the Constitution and laws of the United States and Maryland. However, alleged violations of the Constitution and laws of the United States and Maryland are not violations of this agreement, and MSP's constitutional and statutory obligations are not enforceable under this agreement.

3 Implementation of Policy Against Racial Profiling

3.1 Training

- 3.1.1 The National Highway Traffic Safety Administration (NHTSA) has developed a nationwide training program for the proper conduct of traffic stops, in part to heighten officer awareness of potential civil rights implications of actions at the traffic stop. MSP training in regard to its anti-discrimination policy will include the use of updated statistics generated through the data collection program described herein and from other sources, to examine numbers of searches and search find rates by troopers, including the race of motorists searched. The

NHTSA training and this training will be provided to all MSP troopers who patrol highways, with input from the community consultation program discussed below in Section 6.

- 3.1.2 MSP will hire a consultant to review related MSP training programs who, with input from the Police-Citizen Advisory Committee as well as review of stop tapes, will recommend improvements. This consultant's review will include review of training that MSP troopers receive on drug interdiction, including such training provided within MSP, and, where practicable to do so, also by agencies other than MSP. MSP acknowledges its obligation to utilize its best efforts to assure that its troopers do not follow drug interdiction training or practices that conflict with the General Policy Prohibiting Racial Profiling, stated above.
- 3.1.3 MSP will provide in-service training to ensure that officers understand that motorist complaints are an important and valuable part of the public service MSP provides, that complaining citizens are to be treated with respect and understanding, and that each complaint must be promptly brought to the attention of the commanding officer of the trooper involved in the incident.
- 3.1.4 The Superintendent shall designate an officer to coordinate all training received by troopers concerning drug interdiction and traffic stops, including Academy training, general in-service training, and training received from outside sources. MSP will use its best efforts to assure that MSP troopers do not receive training in drug interdiction and traffic stops that conflicts with MSP's policy against racial profiling or the requirements of this consent decree. Toward this end, before approving payment, reimbursement, or an award of in-service credit for outside training in drug interdiction and traffic stops, the approving authority will review any available course materials to ensure that the training is consistent with the principles of non-discrimination embodied in this agreement. To assist in this review in the future, MSP's Education Command will make best efforts to obtain and retain on file course materials from all outside trainings in drug interdiction or traffic stops henceforth received by MSP personnel, and will develop a list of recommended courses in this subject area. Where a particular drug interdiction or traffic stop course has been identified by MSP as inconsistent with principles of non-discrimination, MSP will make that information available to its personnel, and MSP will not approve further requests for payment, reimbursement, or award of in-service training credit for that course, unless the course has been revised to be consistent with principles of non-discrimination. MSP will also instruct personnel that recipients of training from outside sources may not implement any principles of law enforcement that are inconsistent with those in applicable federal and state law and MSP policies.

3.2 Audio-Visual Taping of Stops and Searches

- 3.2.1 MSP has voluntarily installed equipment for the automatic video and audio recording of traffic stops on troopers' patrol cars; currently all cars operating out of all barracks that patrol I-95 are so equipped. It is MSP's desire eventually to have all MSP patrol cars so

equipped throughout the State of Maryland. When and to the extent that financing becomes available to equip other vehicles, MSP will so equip all vehicles.

- 3.2.2 The equipment automatically begins taping upon activation of the car's siren and/or emergency lights and continues until the car leaves the scene of the stop. The microphone is manually activated. Review of tapes available to date demonstrates that technical difficulties occur. Over the next year, MSP will work with the contractor from which the equipment was purchased to attempt to assure that these difficulties are resolved. MSP also will work with the contractor so that, if practicable, the trooper's microphone is automatically activated whenever videotaping is occurring. In the meantime, MSP will continue to have a policy that requires that the trooper activate the microphone when the event is called in.

3.3 Complaint Process Relating to Racial Profiling

- 3.3.1 No later than sixty (60) days after the effective date of the agreement, MSP will take, or will continue to take, the following actions.
 - 3.3.1.1 The Settlement Coordinator to be designated pursuant to Section 9.2 will be responsible for tracking the progress of each complaint about racial profiling through its resolution and for maintaining comprehensive statistics regarding complaints to MSP about racial profiling.
 - 3.3.1.2 MSP will continue its present policy of receiving complaints of misconduct orally, by telephone, in person, or in writing, at any MSP installation.
 - 3.3.1.3 MSP will continue to operate a 24-hour toll free telephone hotline to receive complaints.
 - 3.3.1.4 MSP will provide Standard Operating Procedures to all officers staffing the hotline, describing how to receive complaints. The procedure will include directions that each complaint is to be promptly forwarded to the commander of the trooper involved.
 - 3.3.1.5 MSP will produce a brochure explaining the process, and will make complaint forms, brochures, and the hotline number easily available at State-owned rest stops, MSP barracks, and MVA (assuming the agreement of MVA management). Troopers also will keep copies of the brochure in their cars and will orally offer a copy to every motorist ticketed or searched by MSP, at the conclusion of the stop, unless in a particular instance doing so is impracticable. As part of the long term provisions that MSP will develop pursuant to Section 5.3, MSP will develop standards for determining when a trooper may decline to offer a copy of the brochure to a motorist on grounds of impracticability, as is stated in Section 5.3.3.7.
 - 3.3.1.6 The brochure will include information helpful to the motorist during the process of complaining about or commending the conduct of a trooper, such as a reminder to write down the trooper's name and identification number, the car number, the date, time and location of the event.

- 3.3.1.7 MSP will provide in-service training to ensure that officers understand that motorist complaints are an important and valuable part of the public service provided by MSP, that troopers are to treat motorists with complaints with respect and understanding, and that each complaint is to be promptly forwarded to the supervisor of the trooper involved.
- 3.3.1.8 A consultant will review the current complaint process. This review will include relevant documents, such as complaint forms and informational brochures, and descriptions or explanations of the process in the MSP Manual or elsewhere. The consultant will recommend revisions in the process and the relevant documents, to the extent the consultant deems it necessary, to improve the process and assure that it is user-friendly, and so that the process is specifically and clearly described. The consultant also will review the Manual and recommend revisions, if necessary, to provide explicitly that motorist complaints are an important and valuable part of the public service provided by MSP, that troopers are to treat motorists with complaints with respect and understanding, and that each complaint is to be promptly forwarded to the supervisor of the trooper involved. Any changes to the complaint process will be consistent with LEOBR, Art. 27, §§ 727 -734D.
- 3.3.1.9 MSP will continue its practice and formally adopt a policy that authorizes a complainant to be accompanied by another person of his or her choice when interviewed regarding the complaint, unless the other person is a witness. Such a person may be excluded if he or she becomes disruptive or otherwise interferes with the interview of the complainant.
- 3.3.1.10 Although these complaint procedures are being adopted in the context of implementing policies against racial profiling, they will pertain to all complaints, unless MSP management finds that they are inappropriate to other circumstances.
- 3.3.1.11 In consultation with MSP, a consultant will develop and begin implementation of procedures for producing quarterly or more frequent reports on the incidence, nature, location, and disposition of complaints alleging racial profiling. Copies of such reports will be provided to plaintiffs. MSP will continue providing such reports to plaintiffs after the departure of the consultant. Counsel for plaintiffs may request additional information about any such complaint. Subject to confidentiality statutes binding upon MSP, MSP will provide such information upon request.
- 3.3.2 With the Police-Citizen Advisory Committee described in Section 6, the parties will explore the possibility of designing an informal process to resolve complaints of racial profiling that avoids the delay and procedural demands of the formal complaint investigation and disciplinary process and still protects the officers' rights under the Law Enforcement Officers' Bill of Rights ("LEOBR"), Art. 27B §§727-734D. If it appears useful, other citizens and organizations, including the Maryland Troopers Association and the Coalition of Black Troopers, may also join in this effort.

3.3.2.1 If it is deemed feasible by the Police-Citizen Advisory Committee and MSP, MSP will put in place an alternative dispute resolution process that may allow a complaining motorist to opt for a simpler and quicker way to register a grievance and communicate concerns to the involved trooper, and to allow the trooper involved to respond, perhaps before a third party.

All reasonable efforts will be made to reach a decision about the feasibility of such a process within 12 months of the effective date of this agreement.

3.3.2.2 The process will be voluntary on both sides, as an attempt to come to an amicable solution. Because this process will not contain the procedural protections of LEOBR, it will not lead to discipline against the officer and all statements and evidence will be confidential and may not be used as evidence in a LEOBR proceeding.

4 Data Collection and Technology

4.1 The parties agree that MSP will continue to collect the information currently collected pursuant to the *Wilkins* agreement (attached hereto) with the changes described below.

4.2 The parties also agree that improved access to computer technology, including personal data assistants (“PDAs”) and other technical support, would lighten the burden of collecting and maintaining statistics on stops and searches and make the statistics more easily accessible and usable. The parties will work towards additional funding for this purpose. To this date, MSP has sought and has been granted additional funds in FY 2002 to be used to purchase PDAs for MSP sworn personnel. Thereafter, MSP will continue to seek funding for this purpose and to keep sworn personnel equipped with PDAs and maintain equipment in good working condition.

4.3 The parties acknowledge that the General Assembly of Maryland in its 2001 session passed Transportation Art. § 25-113(b)(2), which was signed by the Governor and became effective on July 1, 2001. Also known as the “Race Based Traffic Stops Act,” Transportation Art. § 25-113(b)(2) mandates the collection of similar information for all police departments above a certain minimum size in Maryland, and provides for the Police Training Commission (PTC), in conjunction with the Maryland Justice Analysis Center (MJAC), to develop standardized reporting formats and methodologies. The parties will discuss how the data collection and reporting procedures currently in place and required by this Decree should be adjusted to conform with state-wide practice under the Act, and plaintiffs specifically agree that they will not object to MSP conforming its forms and procedures under this Decree to those required by this statute, provided that the form includes all information required under the *Wilkins* agreement.

4.4 MSP agrees to continue to enforce troopers’ data reporting duties, as set out in this Decree, through appropriate oversight, supervision, and discipline, including in appropriate cases referral to the Internal Affairs Unit for investigation. Review of MSP documents and information, such as dispatcher logs, videotapes, and complaint control logs, to verify that troopers are reporting the required data, will take place as determined in Section 5.

- 4.5 MSP will continue to provide the data to the Court and the plaintiffs on a quarterly basis.
- 4.6 MSP will assure that the data collected are reported back to the reporting Barracks in a form and within a time period that will make the data useful for management review.

5 Management Oversight Relating to Policy Against Racial Profiling

5.1 General provisions

- 5.1.1 Under existing MSP policy, it is the ongoing responsibility of managers and supervisors at all levels to review the work and activities of their subordinates to ensure compliance with the law and MSP policies and procedures. To implement this Consent Decree and to monitor compliance with the policies and procedures established by MSP to prohibit racial profiling, MSP managers and supervisors of law enforcement personnel will undertake further review and inquiry responsibilities.
- 5.1.2 Information available to monitor the establishment of appropriate policies and procedures against racial profiling and the implementation of those policies and procedures by individual officers includes:
 - 5.1.2.1 the Forms 130 generated by troopers for each search conducted, or similar data collected and formatted pursuant to the implementation of Transportation Art. § 25-113(b)(2);
 - 5.1.2.2 the data collected and collated pursuant to the *Wilkins* settlement agreement, based on these forms, or similar data collected and formatted pursuant to the implementation of Transportation Art. § 25-113(b)(2);
 - 5.1.2.3 motorists' complaints of racial profiling;
 - 5.1.2.4 videotapes of MSP stops on I-95; and
 - 5.1.2.5 information concerning newly released, published decisions by Maryland appellate courts, the Supreme Court of the United States, the United States Court of Appeals for the Fourth Circuit, and the United States District Court for the District of Maryland regarding the constitutionality of stop and search procedures.

5.2 Short Term Provisions

- 5.2.1 Within 30 days of the effective date of the agreement, MSP managers and supervisors of law enforcement personnel who patrol I-95 will bolster their efforts to review all relevant information, as set out above, to determine if further inquiry is necessary, such as examination of the sufficiency of current policies and procedures and/or the conduct of

individual troopers. Specifically, these procedures will include at least the following features:

- 5.2.1.1 At the barrack level, the barrack commander or his or her delegated agent will review at least once each month the items listed in Section 5.1.2, at a minimum, except videotapes of individual stops.
- 5.2.1.2 At the state-wide level, the Superintendent's delegated agent will review relevant information at least once each quarter, including at least data collected and collated pursuant to the 1995 *Wilkins* settlement agreement, or similar data pursuant to Transportation Art. § 25-113(b)(2).
- 5.2.1.3 If the reviewer determines that such further inquiry is necessary, he or she will conduct such inquiry as he or she deems appropriate, or refer the matter for further inquiry to the appropriate person or unit.
- 5.2.1.4 At the conclusion of the inquiry, the reviewer will determine whether any action is necessary, and if so, the action to be taken. Necessary actions may include, but are not limited to, changes in forms, policies, procedures or training, further review of the conduct of an individual trooper, consultation with a trooper, additional training of a trooper, or referral of the matter to the Internal Affairs Unit for investigation. The decision of the reviewer is subject to further review by his or her commanding officer.

5.3 Long Term Provisions

- 5.3.1 MSP will continue to survey and work with other law enforcement agencies that have addressed issues of racial profiling, to learn from their experience in order to develop the most effective methods of management oversight, including but not limited to practical and time-efficient methods to monitor effectively by reviewing stop tapes.
- 5.3.2 MSP will develop a management and monitoring system appropriate for MSP, that attempts to satisfy the concerns of motorists and officers. This system will be in place and operating within twelve (12) months of the effective date of this agreement. This system will be based on input from the Police-Citizen Advisory Committee below in Section 6 and from exchange of information with other police departments, as well as information and guidance developed by the MJAC and the PTC pursuant to Transportation Art. § 25-113(b)(2), and a management information consultant, if MSP determines that such a consultant is necessary.
- 5.3.3 This system will consider such items as
 - 5.3.3.1 the data to be monitored;
 - 5.3.3.2 the frequency of monitoring;

- 5.3.3.3 by whom the data, including the stop tapes, are to be monitored;
- 5.3.3.4 the identification of valid and reliable indicators or benchmarks that may be considered when determining an appropriate course of management action in response to information; however, the use of such indicators or benchmarks will not be deemed by the plaintiffs or the Court as an admission that deviation from the indicator or benchmark constitutes racial profiling, violation of this Decree, or other illegal action;
- 5.3.3.5 as an alternative to 5.3.3.4 above, the guidelines developed by the PTC, in consultation with the MJAC, pursuant to Transportation Art. § 25-113(b)(2) for use by a law enforcement agency as a management tool to evaluate the data collected by its officers for use in counseling and improved training;
- 5.3.3.6 the actions that management should consider when indicators are present; and
- 5.3.3.7 standards for determining when a trooper may decline to offer a motorist a copy of the brochure described in Section 3.3.1.5 on grounds of impracticability.
- 5.3.4 The determination of appropriate action lies within the discretion of the manager, and the management information system will not result in a mandate to any manager to take any particular action. However, the manager will document the decision made and the reason for the decision, and an interested party, including plaintiffs in the *NAACP* case, may, during the term of this decree, request that the manager's supervisor review the decision.
- 5.3.5 No later than 10 months after the effective date of this agreement, MSP will provide to plaintiffs and the Court for review and comment a draft plan for a long-term management and monitoring system, consisting, at a minimum, of the features described above.
- 5.3.6 Plaintiffs and the Court may comment and make recommendations concerning the long-term management and monitoring system, and MSP will take full consideration of any comments and recommendations when it produces a final plan. MSP will respond in writing to all recommendations from the Plaintiffs or the Court.
- 5.3.7 MSP will provide its final plan to the Court and plaintiffs promptly after it is completed. Plaintiffs may challenge this plan by the procedures described in Section 1.3.

6 Citizen and Police Involvement to Promote Mutual Understanding

- 6.1 With the goal of fostering mutual trust and respect between police officers and their fellow citizens, the parties will develop a Police-Citizen Advisory Committee consisting of fifteen members, five to be selected by MSP, five to be selected by the NAACP, and five to be selected by a neutral third party. The neutral third party will be selected by the parties, or, if they are unable to agree, by the parties with the assistance of the Court. The Committee will address police and citizen concerns pertaining to MSP policy against race-based law

enforcement in traffic stops and drug interdiction, and may recommend improvements in pertinent MSP policies or practices. This should be a collaborative process that facilitates trust between police and citizens, enhances the credibility of and receptivity to the responses, and brings fresh perspective to the tasks, with citizens and police personnel working together to agree upon useful areas for discussion and any specific recommendations within those areas. Recommendations adopted by the Committee shall be advisory to the Superintendent and may be considered by him in his discretion. The Committee may meet at such times and adopt such procedures as the Committee shall agree by majority vote of its members, provided that the work of the committee shall be concluded within one year after entry of this Decree.

- 6.2 In order to encourage a candid and fruitful exchange of views, Committee discussions and recommendations are intended to be negotiations and discussions undertaken for the purpose of resolving disputed claims and are therefore entitled to the protections afforded by Federal Rule of Evidence 408 and Maryland Rule 5-408.
- 6.3 MSP will be responsible for the routine administrative costs of the meetings of the Committee including travel costs of its members to attend. It will be the responsibility of the Committee to find funding for other projects, events, studies, or undertakings. MSP will pay mileage at rates set periodically by the Maryland Department of Budget and Management up to 400 miles round trip per vehicle.

7 Use of Canines in Automobile Searches

- 7.1 MSP affirms that it will continue to obey the laws of the United States and Maryland regarding the use of canines in automobile searches, and specifically that MSP policy on the use of canines will continue to prohibit detention of an automobile and its passengers to provide time for arrival of a canine unit, unless there exists reasonable suspicion or probable cause to believe a crime has been or is being committed.
- 7.2 An MSP consultant hired pursuant to this Decree will review existing MSP policy statements and orders to assure that they accurately, clearly, and fully express this policy. The consultant will make such recommendations for changes as he or she determines are appropriate for remedying any problems that are identified in the consultant's review.

8 Procedures for Consent Searches

MSP reaffirms its policy that before a trooper seeks consent to search a vehicle, the trooper will present to the person from whom consent is sought a form that, at a minimum, substantially conforms to MSP 78 (9-96) (a copy of which is attached to this Consent Decree and made a part hereof). As in accord with existing policy, before conducting a consent search, the trooper will attempt to obtain the person's signature on such a form. The form will specifically state, in these or substantially similar words: "I understand that I have a

Constitutional right to refuse to consent to this search and that any items seized may be used against me in a court of law.”

9 Mechanics of the Decree

9.1 Term. The effective date of the Decree is the effective date of this agreement, _____. The decree will terminate five years after the effective date, without exception.

9.2 Settlement Coordinator. MSP will appoint a Settlement Coordinator, who will be the point of contact and coordination for all implementation of this agreement. The Settlement Coordinator's tasks will include:

a. Assuring that MSP training includes training created by the National Highway Safety Administration as referenced in Section 3.1.1.

b. Coordinating with the consultant to assure that the consultant has access to materials, personnel and other MSP items so that the consultant can fulfill its responsibilities under this Consent Decree (Sections 3.1.2, 3.3.1.8, 3.3.1.11, and 9.3.)

c. Ensuring MSP personnel are trained to understand the importance of motorist complaints as referenced in Sections 3.1.3.

d. Monitoring the installation of automatic video and audio equipment as set forth in Section 3.2.

e. Tracking the receipt and progress of complaints as referenced in Section 3.3.1.1.

f. Assuring the creation of Standard Operating Procedures for staffing MSP hotline as set forth in Section 3.3.1.4.

g. Assuring the creation and use of MSP brochure regarding complaints as set forth in Section 3.3.1.5.

h. Working with the MSP Police-Citizen Advisory Committee described in Section 3.3.2 and Section 6 of the Consent Decree.

i. Assuring MSP compliance with data collection and reporting requirements referenced in Section 4 and monitoring the acquisition and use of data collection equipment.

j. Ensuring that managers and supervisors are properly trained about their overall responsibilities in the Consent Decree and specifically under Section 5.

k. Ensuring through issuance of notifications that MSP personnel comply with procedures for consent searches as set forth in Section 8.

- 9.3 Consultant(s) to assist in implementation. Within three months after entry of this settlement agreement, MSP will retain an independent consultant, or such additional consultants as MSP may determine to be necessary, to assist MSP as provided in Sections 3.1 (training), 3.3.1.5 (complaint materials), 3.3.1.1 (complaint summaries), 3.3.1.11 (reporting complaints alleging racial profiling), and 5.1.2 (management information).
- 9.3.1 The purpose of the consultant or consultants is to provide substantive advice and recommendations to MSP on how further to implement Section 4 of this Decree, in order to assist MSP in further implementing its policy against race-based law enforcement set out in Section 2. MSP will not reject the recommendations of the consultant without reasonable cause, and will explain such cause to the Court and the plaintiffs. The consultant or consultants are not to act as the agents of plaintiffs or arms of the Court as monitors or overseers.
- 9.3.2 The consultants will be chosen by MSP with the agreement of the plaintiffs and the Court. Plaintiffs will not reject a consultant chosen by MSP without reasonable cause, and will explain such cause to the Court and MSP.
- 9.3.3 Each of the consultants will provide the Court and the plaintiffs a progress report at six months and twelve months after entry of the decree, which reports will be prepared without MSP interference or oversight. The reports will include information concerning MSP's progress in meeting the implementation steps agreed to in this Decree, and information concerning the recommendations made by the Consultants, whether MSP has accepted, rejected, or accepted them with modifications, and MSP's progress towards implementing the recommendations.
- 9.3.4 The tasks of the consultant or consultants are expected to be time-limited. However, if during the term of this Decree, the parties find problems or difficulties in implementation of consultation, they may request additional assistance from the consultant or consultants. MSP will not unreasonably refuse plaintiffs' request for additional assistance from the consultant, provided that plaintiffs' request is directed towards meeting one or more of the implementation steps agreed to in this Decree.
- 9.4 Enforcement
- 9.4.1 Definition of Noncompliance
- 9.4.1.1 "Noncompliance" means failure of any party to implement the specific items the party agrees to.
- 9.4.1.2 Statistical evidence alone cannot prove noncompliance. This agreement is neutral as to whether statistical evidence is admissible in a compliance hearing. Statistical evidence will be admissible as the substantive law and the law of evidence permit, and the parties are free

to argue that it is or is not admissible for any particular purpose or in any particular hearing, as well as to argue as to its use, materiality, relevance, or to raise any other objection.

9.4.1.3 As stated in the General Policy Prohibiting Racial Profiling, alleged violations of the Constitution and laws are not violations of this agreement; however, this acknowledgment does not preclude plaintiffs from seeking to introduce evidence in a compliance hearing that, they allege, may show violations of the Constitution or laws of the United States or Maryland, on the grounds that the evidence is relevant to a claimed violation of an obligation under this Consent Decree. The admission of such proffered evidence will be determined under generally applicable laws, including the Federal Rules of Evidence.

9.4.2 Mechanics of Enforcement

9.4.2.1 Notice of Alleged Non-Compliance and Opportunity to Cure.

9.4.2.1.1. If either party believes the other party, or in the case of MSP, individual MSP sworn personnel, have violated the terms of this Decree, that party will notify the other and its counsel of the alleged violation. The notifying party will take no other action concerning the alleged violation until the conditions of this subsection have been met.

9.4.2.1.2. Written notice by plaintiffs will be sent to the Superintendent of MSP, MSP's principal counsel, and the Chief of Litigation of the Office of the Attorney General of Maryland. Written notice by MSP will be sent to the designated counsel of the Maryland State Conference of NAACP Branches ("the NAACP"). Unless the NAACP subsequently notifies the MSP in writing of a change in counsel, it will be sufficient to provide notice to the Executive Director of the American Civil Liberties Union Foundation of Maryland.

9.4.2.1.3. Notice will contain specific information, such as names, dates, times and places, as available, so that the notified party will have sufficient information to investigate the allegation(s).

9.4.2.1.4 Upon receipt of a notice to the MSP, the Superintendent or his delegated agent will, in consultation with counsel, promptly initiate investigation of the allegation(s). Upon receipt of a notice to plaintiffs, the plaintiff or plaintiffs will promptly initiate investigation of the allegation(s).

9.4.2.1.5 Within 20 days of receipt of the notice, the party notified or its counsel will send to the counsel for the notifying party a written response to the alleged violation, including the results of the investigation and, if the allegation has been substantiated, the actions the party plans to take in response to the violation.

9.4.2.1.6 If 20 days is insufficient time to complete the investigation, the written response will include a description of the actions taken to investigate to date, the non-confidential information, as set out in State Government Article, §§10-611 *et seq.* (Maryland Public Information Act), State Personnel and Pensions Article, §5-214, and Article 27, §§727 *et seq.* (Law Enforcement Officers' Bill of Rights), gathered to date, and the expected time it will take to complete the investigation.

The notified party may then request the agreement of the notifying party to a second 20-day period in which to complete the investigation. The notifying party will not unreasonably withhold its agreement to this extension. Only in extraordinary circumstances, however, will the notified party request further extension of the investigation period. The notifying party is free to decline requests for further extension unless it is satisfied that such additional extension is justified by extraordinary circumstances.

9.4.2.1.7 All parties and their counsel agree not to make public the allegations of violation during the 20-day period described in Section 9.4.2.1.5, unless the allegations concern a matter already independently in the public domain or the matter is one of extraordinary public concern and urgency. Parties and counsel will make the determination that the allegations concern a matter already independently in the public domain or the matter is one of extraordinary public concern and urgency only upon careful consideration and in good faith. If an extension of the investigation period is granted pursuant to Section 9.4.2.1.6, the parties will not make the allegations public without first consulting with opposing counsel and making a good faith effort to reach agreement on this point.

9.4.2.2. Enforcement by the Court

9.4.2.2.1 If, after notice of alleged non-compliance and opportunity to cure in accordance with the foregoing, plaintiffs or defendants contend that the other party has not made good faith and objectively reasonable efforts to investigate and respond to the alleged noncompliance, plaintiffs or defendants may ask the Court to issue an Order of Specific Enforcement. Such request shall set forth the alleged noncompliance and outline the bases for the allegation. The Court thereafter will schedule proceedings as it deems appropriate in response to the request.

9.4.2.2.2 If the Court finds, by a preponderance of the evidence, that plaintiffs or defendants have shown noncompliance with this decree by the other party or parties, it will issue an Order of Specific Enforcement. In determining whether a party is or is not in compliance with this decree, the Court may consider the presence or absence of willful or negligent noncompliance or external events beyond the ability of the party to control.

9.4.2.2.3 The failure of a party to comply with this Order of Specific Enforcement will subject the party to contempt sanctions, in accordance with established law.

9.4.2.3 Right to Appeal The parties agree that either party may take an appeal from any decision issued by the Court concerning interpretation or enforcement of this Decree as permitted by existing law.

9.5 If this decree creates compliance issues for MSP by creating a conflict with the LEOBR or any Collective Bargaining Memorandum of Understanding, MSP may, by motion, ask the Court to be relieved of the conflicting obligation under procedures described in Section 1.3.

10 Counsel Fees and Expenses

- 10.1 The Maryland State Police agree, subject to approval of the Maryland Board of Public Works, to the amount of \$325,000.00 to plaintiffs' attorneys for attorneys' fees and expenses reasonably incurred (and not previously paid) in *Wilkins* and in negotiating this Consent Decree. Defendants agree that their counsel will recommend the amount of fees and expenses agreed upon herein, together with this Consent Decree, to the Board of Public Works at the earliest possible meeting of that Board.
- 11.0 The Clarifying Addendum to the Consent Decree attached hereto as Exhibit C is adopted by reference in its entirety and is part of this Decree for all purposes.

The parties and their counsel approve this Consent Decree, and will seek its entry upon the approval of the Board of Public Works.

FOR THE PLAINTIFFS:

Deborah A. Jeon
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF MARYLAND
100 North Liberty Street
Centreville, Maryland 21617
(410) 758-1975

Robert L. Wilkins
VENABLE, BAETJER, HOWARD &
CIVILETTI LLP
1201 New York Avenue, N.W., Suite 1000
Washington, D.C. 20005-3917
(202) 962-4058

Reginald T. Shuford
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad Street
New York, New York 10004
(212) 549-2613

William J. Mertens
ASBILL MOFFITT & BOSS, CHTD.
1615 New Hampshire Ave., N.W., Suite 200
Washington, D.C. 20009-2520
(202) 234-9000

Jonathan P. Guy
SWIDLER BERLIN SHEREFF FRIEDMAN,
LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007-5116
(202) 424-7500

Andrew D. Freeman
BROWN GOLDSTEIN LEVY LLP
120 E. Baltimore Street, Suite 1700
Baltimore, MD 21202
(410) 962-1030

FOR THE DEFENDANTS, MARYLAND STATE POLICE and COLONEL EDWARD T. NORRIS,
IN HIS OFFICIAL CAPACITY AS SUPERINTENDENT OF THE MARYLAND STATE POLICE:

Colonel Edward T. Norris
Superintendent of the Maryland State Police
MARYLAND STATE POLICE
1201 Reisterstown Road
Pikesville, MD 21208-3899

Maureen M. Dove
Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
200 St. Paul Place
Baltimore, MD 21202-2021
(410) 576-6324

Betty Stemley Sconion
Principal Counsel
OFFICE OF THE ATTORNEY GENERAL
MARYLAND STATE POLICE
1201 Reisterstown Road
Pikesville, MD 21208
(410) 653-4223

Steven M. Sullivan
Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
200 St. Paul Place
Baltimore, MD 21202-2021
(410) 576-6324

SO ORDERED THIS ____ DAY OF _____, 2003:

Catherine C. Blake
UNITED STATES DISTRICT JUDGE

ATTACHMENTS

- A. *Wilkins* settlement agreement
- B. MSP 78 (9-96) (MSP consent search form)
- C. Clarifying addendum to consent decree